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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,406	01/22/2004	Mark Unzicker	2-5169-056	4905
803	7590	01/07/2005	EXAMINER	
STURM & FIX LLP 206 SIXTH AVENUE SUITE 1213 DES MOINES, IA 50309-4076			NOVOSAD, CHRISTOPHER J	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/762,406	UNZICKER ET AL.
Examiner	Art Unit	
	Christopher J. Novosad	3671

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 November 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 5-22 is/are pending in the application.
4a) Of the above claim(s) 5-18 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 19-22 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

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Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: ____.

DETAILED ACTION

Claims 1-4 are canceled.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 19-22 are again rejected under 35 U.S.C. 102(b) as being anticipated by German Patent No. 19858151 (German '151).

With respect to claim 19, German '151 discloses an excavating apparatus (10) having a prime mover (12a) with a longitudinal centerline (not shown) and comprising a main frame (12 – the structure supporting the operator's cab, engine and counterweight in Fig. 1) with an engine (12a), a ground drive system (12b) and an excavation boom (14, 18) operatively attached at a pivot axis (unnumbered – the horizontal pivot axis at the lower end of boom member 14a immediately adjacent to the operator's cab and next to the engine 12a shown in Figs. 1 and 2) thereto, said excavation boom (14, 18) comprising a first end (unnumbered – the lower end of boom member 14a adjacent the engine 12a shown in Fig. 1) and a second end (unnumbered – near 18c in Fig. 1), said first end being operatively pivotally attached to said main frame (12) at the pivot axis (mentioned above), said pivot axis being transverse to the longitudinal centerline of said prime mover (12a), said pivot axis (unnumbered – mentioned above) being fixed with respect to the engine (12a), a head shaft (near 18c) operatively attached to the second end (unnumbered – near 18c) of said boom (14, 18) along a head shaft axis (shaft axis for gear 18c),

said head shaft axis being transverse to the longitudinal centerline of the prime mover (12a); and wherein said boom (14, 18) further includes a tilt axis (AK – see the tilt of the excavator section 18 (Fig. 3) relative to the boom element 14c about the axis AK, shown in Figs. 1 and 3) allowing head shaft (shaft for gear 18c) to pivot along the tilt axis (AK) which is fixed substantially perpendicular with respect to said pivot axis (unnumbered – mentioned above).

It is to be noted by applicant that the Examiner's application of the reference to claim 19, as noted above, differs from that in the previous Office action. The rejection now relies on **both the elements 14 and 18** (Fig. 1) as meeting the broadly recited "excavation boom" whereas in the previous Office action the Examiner relied **only on element 18** of the reference to meet the recited "excavation boom."

With respect to claims 20-22, German '151 discloses an excavating apparatus (10) having a prime mover (12a) with a longitudinal centerline (not shown) and comprising a main frame (12 – the structure supporting the operator's cab, engine and counterweight in Fig. 1) with an engine (12a), a ground drive system (12b) and an excavation boom (14, 18) operatively attached at a pivot axis (unnumbered – the horizontal pivot axis at the lower end of boom member 14a immediately adjacent to the operator's cab and next to the engine 12a shown in Figs. 1 and 2) thereto, said excavation boom (14, 18) comprising a first end (unnumbered – the lower end of boom member 14a adjacent the engine 12a shown in Fig. 1) and a second end (unnumbered – near 18c in Fig. 1), said first end being operatively pivotally attached to said main frame (12) at the pivot axis (mentioned above), said pivot axis being transverse to the longitudinal centerline

of said prime mover (12a), said pivot axis (unnumbered – mentioned above) being fixed with respect to the engine (12a), a head shaft (shaft for gear 18c) operatively attached to the second end (unnumbered – near 18c) of said boom (14, 18) along a head shaft axis (shaft axis for gear 18c), said head shaft axis being transverse to the longitudinal centerline of the prime mover (12a); and wherein said head shaft (shaft for gear 18c) is also operatively pivotally attached to said excavation boom along a tilt axis (AK – see the tilt of the excavator section 18, Fig. 3, relative to the boom element 14c about the tilt axis AK, shown in Figs. 1 and 3); wherein the tilt axis (AK) is fixed substantially perpendicular to said pivot axis (unnumbered – mentioned above), and wherein the tilt axis (AK) is fixed substantially parallel to a line substantially perpendicular to said pivot axis.

Again, it is to be noted by applicant that the Examiner's application of the reference to claims 20-22, as noted above, differs from that in the previous Office action. The rejection now relies on **both the elements 14 and 18** (these elements including 14a, 14b, 14c, 16 and 18, Fig. 1) as meeting the broadly recited "excavation boom" whereas in the previous Office action the Examiner relied **only on element 18** of German Patent '151 to meet the recited "excavation boom."

Response to Applicant's Arguments

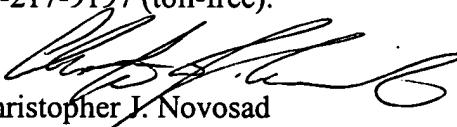
Applicants' traversal of the rejection based on the argument that "said pivot axis" 44 of the structure of German Patent '151 is not "fixed with respect to the engine," as recited in independent claims 19 and 20, is inaccurate because the numeral "44" does not appear in the

reference patent, and therefore, could not have been relied on in the rejection to denote the "pivot axis." Rather, contrary to applicants' argument, the German Patent '151, as now relied upon, discloses a "pivot axis" (unnumbered, and which corresponds to the horizontal pivot axis at the lower end of boom member 14a immediately adjacent to the operator's cab and next to the engine 12a, Figs. 1 and 2) which is clearly shown to be "fixed with respect to the engine" (12a), as called for in these claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 703-308-2246. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad
Primary Examiner
Art Unit 3671

January 5, 2005